

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Case No. 3:20-cv-00626-MMD-CSD

Plaintiff,

ORDER

v.

\$204,700.00 IN UNITED STATES
CURRENCY,

Defendant.

LISA HENRY,

Claimant.

I. SUMMARY

On June 7, 2021, the Court issued an order denying Plaintiff United States of America's motion to conditionally strike the judicial claim of Claimant Lisa Henry. (ECF No. 27 ("Order" or "June 7 Order").) The Court found that Claimant should be afforded an opportunity to cure the defects of her responses to Plaintiff's special interrogatories but warned that Claimant's failure to do so would result in the Court striking her judicial claim. (*Id.*) Thereafter, Claimant filed a motion for certification to interlocutory appeal the Court's Order under 28 U.S.C. § 1292(b), which includes a request to stay proceedings pending appeal. (ECF No. 28 ("Certification Motion").) Plaintiff now moves again to strike Claimant's judicial claim for failure to comply with Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions ("Supp. R.") G(6). (ECF No. 32 ("Strike Motion").) Recently, Claimant has also filed a motion for a pretrial conference to expedite the disposition of this action under Local Rule 16-2. (ECF No. 35.)

Because the Court finds that certification to interlocutory appeal is unwarranted and, as further explained below, the Court will deny Claimant's Certification Motion, and

1 will deny her motion for a pretrial conference as moot. Additionally, given the posturing
 2 of this case and consideration of a similar case¹ before the Court, Plaintiff's Strike
 3 Motion is denied. The Court will provide Claimant with one final opportunity to respond
 4 to Plaintiff's special interrogatories within 15 days of this order.

5 **II. BACKGROUND**

6 The Court incorporates by reference the recitation of the factual background
 7 provided in its June 7 Order. (ECF No. 27 at 2.) Relevant to this order, in the Order, the
 8 Court denied without prejudice Plaintiff's motion to conditionally strike Claimant's judicial
 9 claim. (*Id.*) The Court noted that United States Magistrate Judge William G. Cobb had
 10 granted Plaintiff's previous motion to compel Claimant to provide full and complete
 11 responses, and the Court observed that Claimant's responses were "inadequate
 12 regarding Claimant's identity and her relationship to the defendant property." (*Id.* at 3-4.)
 13 However, the Court was "not satisfied that an opportunity should not be afforded to
 14 Claimant to cure the defects of her responses." (*Id.* at 4 (citing Advisory Comm. Notes
 15 to Rule G(8).) The Court warned Claimant that failure to respond to the special
 16 interrogatories would result in the Court striking her judicial claim. (*Id.*)

17 Two weeks following the June 7 Order, Claimant filed her Certification Motion,
 18 which included a request for a stay of the proceedings. (ECF No. 28.) To date, the
 19 record does not indicate that Claimant filed updated responses to Plaintiff's special
 20 interrogatories. Moreover, Plaintiff's counsel provided a declaration stating that the
 21 parties engaged in a telephonic meet-and-confer on June 21, 2021, where "Claimant
 22 was declining to further supplement her special-interrogatory responses" and where
 23 Claimant stated that she did not "need additional time to supplement her special-
 24 interrogatory responses." (ECF No. 32-1 at 5.)

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27 28 ¹The Court takes judicial notice of a similar asset forfeiture action also before the
 Court that is brought by Claimant's counsel. See *United States v. 1,106,775.00 in U.S.
 Currency*, Case No. 3:20-cv-00158-MMD-CSD, ECF No. 72 (D. Nev. Feb. 7, 2022).

1 **III. DISCUSSION**

2 The Court will first address Claimant's Certification Motion. Because the Court
 3 finds certification for interlocutory appeal and a stay are not warranted, the Court need
 4 not address the motion for a pretrial conference to expedite the disposition of this action
 5 under LR 16-2, and will therefore deny it as moot. The Court will then address Plaintiff's
 6 Strike Motion, find that Claimant should be afforded one last opportunity to file
 7 responses to Plaintiff's special interrogatories, and will then deny the Strike Motion.

8 **A. Certification Motion²**

9 Claimant argues the Court's finding that Claimant lacked standing is "obvious,
 10 manifest error." (ECF No. 28 at 2.) Specifically, Claimant argues that (1) the ruling that
 11 she lacks standing is a controlling question of law, (2) her appeal may materially
 12 advance the ultimate termination of the litigation, and (3) there is more than a
 13 substantial ground for difference of opinion as to whether she lacks standing. (*Id.* at 5-
 14 9.)³ Plaintiff counters that Claimant has misidentified the controlling legal issue in the
 15 Court's Order and that the Order does not qualify for interlocutory appeal under 28
 16 U.S.C. § 1292(b). (ECF No. 30 at 5-14.) The Court agrees with Plaintiff.

17 Ordinarily, interlocutory orders, such as orders relating to discovery, are not
 18 immediately appealable. See *James v. Price Stern Sloan, Inc.*, 283 F.3d 1064, 1067 n.6
 19 (9th Cir. 2002). However, a federal district court may certify any interlocutory order for
 20 appeal to the circuit court if: (1) the order "involves a controlling question of law;" (2) "as
 21 to which there is substantial ground for difference of opinion;" and (3) "that an
 22 immediate appeal of the order may materially advance the ultimate termination of the
 23 litigation." 28 U.S.C. § 1292(b). The party pursuing the interlocutory appeal bears the
 24 burden of showing that all three requirements under § 1292(b) have been met, and the
 25 district court is required to "expressly find in writing that all three § 1292(b) requirements

26 ²Plaintiff filed a response and Claimant filed a reply. (ECF Nos. 30, 31.)

27 ³Additionally, Claimant requests a stay of the proceedings pending appellate
 28 review. (ECF No. 28 at 9-10.) Because the Court finds a certificate of interlocutory
 appeal is unwarranted and will deny Claimant's Certification Motion, the Court also
 denies the request to stay the proceedings.

1 are met." *Couch v. Telescope Inc.*, 611 F.3d 629, 633 (9th Cir. 2010). Moreover, §
 2 1292(b) should be used only in exceptional situations where allowing an interlocutory
 3 appeal would avoid protracted and expensive litigation. See *In re Cement Antitrust*
 4 *Litig.*, 673 F.2d 1020, 1026 (9th Cir. 1981).

5 In their Certification Motion, Claimant asserts that the Court's ruling that she
 6 lacks standing is a controlling question of law, and that "a successful interlocutory
 7 appeal on the standing issue will undoubtedly impact the course of the litigation." (ECF
 8 No. 28 at 5-7 (brackets and quotes omitted).) However, the Court has not ruled on the
 9 issue of Claimant's standing, and therefore finds this argument lacks merit.

10 As the Court previously noted in the similar forfeiture action pending before the
 11 Court, a claimant must establish both statutory and Article III standing in order to
 12 challenge an *in rem* civil forfeiture action. See *United States v. 1,106,775.00 in U.S.*
 13 *Currency*, Case No. 3:20-cv-00158-MMD-WGC, 2020 WL 6930103, at *1, n.1 (D. Nev.
 14 Nov. 23, 2020) (citing *United States v. 6107 Hogg Rd.*, Case No. 1:11-cv-00300-CWD,
 15 2017 WL 1013868, *4 (D. Idaho Mar. 14, 2017)). In the June 7 Order, the Court stated
 16 that Judge Cobb had "addressed Claimant's standing argument." (ECF No. 27 at 3.)
 17 The Court was referencing Judge Cobb's order where Claimant had raised her standing
 18 argument. (*Id.*) In that order, Judge Cobb—reading into the record this Court's order in
 19 *1,106,775.00 in U.S. Currency*—found the analogy and the issues raised in that case
 20 and this case to be similar and granted Plaintiff's motion to compel. (ECF No. 26 at 2-3.)
 21 Judge Cobb relied on this Court's reasoning that a claimant is required to respond
 22 adequately to the special interrogatories because the "truth-seeking function" of Supp.
 23 R. G(6) is premised on gathering information on a claimant's identity and relationship to
 24 the defendant property to determine standing. (*Id.* at 2.) Despite Claimant's position that
 25 the Court has ruled that they lack standing, the Court simply has not done so.

26 Moreover, the Court finds that certification of interlocutory appeal of the Court's
 27 Order will not "materially advance the ultimate termination of the litigation." 28 U.S.C. §
 28 1292(b). As both parties observed (ECF Nos. 28 at 7, 30 at 12), the third requirement

under § 1292(b) is closely tied with the first requirement, which addresses whether the Order involves a controlling question of law. As stated above, the Court finds there is no controlling question of law that presently warrants certification; consequently, an interlocutory appeal would not materially advance the termination of this case. As such, the Court need not reach the merits of the second requirement as all three requirements must be met. See *Couch*, 611 F.3d at 633. Claimant therefore fails to satisfy her burden under § 1292(b), and the Court has additionally determined that this is not an exceptional situation where “an interlocutory appeal would avoid protracted and expensive litigation.” *In re Cement Antitrust Litig.*, 673 F.2d at 1026. The Court therefore denies Claimant’s Certification Motion.

B. Strike Motion⁴

Plaintiff argues the Court should strike Claimant’s judicial claim for failing to comply with Supp. R. G(6) because Claimant has (1) been compelled to fully and completely respond to the special interrogatories, (2) failed to do so, (3) been afforded opportunities to cure the deficiencies, and (4) continued to not comply with Supp. R. G(6). (ECF No. 32.) Claimant counters again that she has Article III and statutory standing and appears to allege that Plaintiff is seeking to force Claimant to “expend her limited resources in the face of the [Plaintiff’s] own unlimited resources.” (ECF No. 33 at 1-4, 2.) In light of the current posturing of this case, the passage of time, and consideration of the Court’s recent order in 1,106,775.00 in U.S. Currency, see *supra* footnote at pp. 2, the Court denies the Strike Motion.

In the June 7 Order, the Court warned Claimant that “her failure to respond adequately henceforth will result in the Court striking her judicial claim.” (ECF No. 27 at 4.) However, the Court notes that the Order did not provide a deadline for Claimant to update her responses to the special interrogatories, and shortly thereafter, Claimant filed her Certification Motion and requested a stay of the proceedings. (ECF No. 28.) Because the Court did not rule on the Certification Motion and its June 7 Order did not

⁴Claimant filed a response and Plaintiff file a reply. (ECF Nos. 33, 34.)

1 provide a clear deadline, Claimant will be afforded one final opportunity to cure the
2 defects of her responses to the special interrogatories. As such, Claimant will have 15
3 days from the date of this order to respond to Plaintiff's special interrogatories fully and
4 completely.

5 **IV. CONCLUSION**

6 The Court notes that the parties made several arguments and cited to several
7 cases not discussed above. The Court has reviewed these arguments and cases and
8 determines that they do not warrant discussion as they do not affect the outcome of the
9 motions before the Court.

10 It is therefore ordered that Claimant Lisa Henry's motion for certification for
11 interlocutory appeal (ECF No. 28) is denied.

12 It is further ordered that Claimant's motion for a pretrial conference to expedite
13 disposition (ECF No. 35) is denied as moot.

14 It is further ordered that Plaintiff's motion to strike (ECF No. 32) is denied.

15 It is further ordered that Claimant will have 15 days from the date this order is
16 entered to respond to Plaintiff's special interrogatories fully and completely.

17 DATED THIS 8th Day of February 2022.

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MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE

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